

No. 3022

No. 3023

No. 3024

**United States Circuit Court
of Appeals
For the Ninth Circuit**

LOGAN BILLINGSLEY and
FRED BILLINGSLEY,
Plaintiffs in Error,

vs.

THE UNITED STATES OF
AMERICA,
Defendant in Error.

UPON WRIT OF ERROR TO THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN
DIVISION.

Supplemental Brief of Defendant in Error

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Supplemental Brief of Defendant in Error

Leave of court being first had and obtained, the
defendant in error submits the following supple-
mental brief:

Counsel for plaintiffs in error have served upon

this office under date of October 4, 1917, their brief in support of their Writ of Error.

The brief thus submitted is given over in the most part to a discussion of the question as to the right of a defendant to change his plea. This question is discussed in the original brief filed on behalf of the government. Contrary, however, to the suggestion of counsel for the plaintiffs in error as made to government's counsel, there has been an attempt made on page 13 of the brief to raise a question as to the sufficiency of one of the indictments charged against these several defendants.

This makes it necessary to call the attention of the court to the fact that there are three different cases pending against these two defendants in the United States District Court for the Western District of Washington.

In Cause No. 3492 in the lower court, here No. 3022, defendants were charged in a single count with a conspiracy to violate Section 238 of the Penal Code. Both of the defendants, Logan Billingsley and Fred Billingsley, pleaded guilty to this count.

In Cause No. 3500 in the lower court, here No.

3023, these two defendants, together with other persons, were charged in two counts with conspiracy to violate Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce," and amendments thereto. The defendant, Logan Billingsley, pleaded guilty to Count I of this indictment.

In Cause No. 3551 in the lower court, here Cause No. 3024, the record of which has not been printed, in three counts, the first of which charges a conspiracy on the part of numerous defendants, including the defendants, Logan Billingsley and Fred Billingsley, with conspiring to violate Section 238 of the Penal Code of the United States. In Count II the same defendants were charged with conspiring to violate the Act of Congress of February 4, 1887, as amended, while Count III charged the same defendants in another form conspiring to violate Section 238 of the Penal Code. The two defendants, Logan Billingsley and Fred Billingsley, each pleaded guilty to each of the three counts in this indictment.

Of the cases referred to, Causes No. 3022

(Lower Court No. 3492) and No. 3023 (Lower Court No. 3500), the transcript has been printed, while in Cause No. 3024 (Lower Court No. 3551), the transcript has not been printed.

It should be noted that the argument of counsel on page 13 has reference to those counts in which is charged a violation of Section 238, and is not applicable to the other counts of the indictment directed at the Inter-State Commerce Act. It appears to be the contention of counsel in so far as the record concerns Section 238, that under that section it is not permissible to include in a charge under Section 37 persons other than those "officers, agents or employees referred to in Section 238." While counsel cites no authority in support of this contention, it is suggested to the court that this is not a new contention, but is one that on different occasions has been presented to various courts.

In support of the contention of counsel for the government that a person who does not belong to a particular class of persons may conspire with others within that class to commit an offense which he could not himself commit, the following authorities

are cited:

Queen v. Whitechurch, L. R. 24 Q. B. D. 420.

U. S. v. Boyer, 4 Dill. 407, Fed. Cases 14547.

Rex v. Potts, R. & R. 353.

State v. Sprague, 4 R. I. 260.

U. S. v. Snyder, 14 Fed. 554.

U. S. v. Stevens, 49 Fed. 736.

In addition to these earlier authorities, there are many recent ones in the federal courts. See:

Steigman, 220 Fed. 65.

U. S. v. Cohn, 142 Fed. 983.

The attention of the court is respectfully directed to the *Steigman* case, in which Lewis and David Steigman were charged with unlawfully conspiring together that Lewis Steigman should commit an act of bankruptcy and thereafter be adjudged a bankrupt, and as such bankrupt should knowingly and fraudulently conceal his property from the trustee. This was an act of course made punishable under the bankruptcy law, and the offense made punishable by bankruptcy law is of course the concealment by a bankrupt of goods

from his trustee. The court holds that the two men could be charged with conspiring to commit the offense, which could be committed by Lewis Steigman alone.

Respectfully submitted,

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Attorney for Defendant in Error.

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